January 8th 1873.

Submitted.

Dismissed for want of assignment of Error

Field J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~584.~~ 807 88

THE PORTLAND COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 10, 1871.

Dec. 1, 1873

January 8th 1873.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~534.~~ 807 88

THE PORTLAND COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 10, 1871.

Dec 2, 1872

SUPREME COURT OF THE UNITED STATES.

No. 534.

THE PORTLAND COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed Oct.* 28, 1869.

The United States Court of Claims.

THE PORTLAND COMPANY
vs.
THE UNITED STATES. } 6082.

To the Honorable Court of Claims:

The petition of the Portland Company, a corporation created by law of the State of Maine, and having its place of business in Portland, in the county of Cumberland, and said State of Maine, respectfully sheweth:

That all the corporators in said company are citizens of said United States.

That the said Portland Company, on the twenty-eighth day of October, in the year of our Lord eighteen hundred and sixty-four, at Boston, in the State of Massachusetts, entered into a written contract with Brevet Brigadier General D. C. McCallum, director and manager of the United States military railroads, acting in behalf of said United States, in the words following, that is to say:

"BOSTON, *October* 28, 1864.

"Brevet Brig. Gen'l D. C. MCCALLUM,
"*U. S. Military Railroads:*

"In compliance with your order of this date we will construct for the United States Government (6) six locomotive engines, (5) five feet
2 gauge, with (4) four (5) five feet driving wheels, iron flues, copper ends, cylinders 16 by 24, two pumps, and a No. 5 inspector on each engine, tender on two trucks, with eight wheels, and not of less than 1800 gallons capacity, tyres to be Bowling Low Moor or semi-steel, unless you are otherwise advised within a week, for the sum of twenty-seven thousand dollars each and Government tax, payable on delivery, the whole number to have precedence of all other work whatever, and to be finished with all possible despatch.

(Signed) "PORTLAND COMPANY,
"By JOHN SPARROW, *Sup't.*

"The above proposition is hereby accepted.

(Signed) "D. C. MCCALLUM,
"*Brevet Brig. Gen'l, Director and Gen'l Manager U. S. Military Railroads.*"

That, in accordance with the terms of said contract, your petitioners did construct and furnish the said described six locomotive engines with their tenders, and the same were, in June and July, in the year of our Lord eighteen hundred and sixty-five, delivered to and accepted by the said United States, at said Portland, at the price named in said contract, to wit, at twenty-eight thousand six hundred and twenty dollars each, being twenty-seven thousand each and Government tax.

And your petitioners say that afterwards they were duly assessed, as manufacturers of said locomotives and tenders, the Government or internal revenue tax or duty upon the same, which they afterwards paid, to wit, one-half July 29th, 1865, and one-half April 17th, 1866, amounting to the sum of sixteen hundred and twenty dollars upon each of said six locomotives and tenders.

And your petitioners further say that the said United States having

acquired the said six locomotive engines and tenders by purchase as aforesaid, and not having any use for the same, sold them at public auction at said Portland, on the nineteenth day of September in the year eighteen hundred and sixty-five, for the sum of sixty-four thousand nine hundred and fifty dollars, that being the highest sum bid therefor; and your petitioners being the highest bidders, became the purchasers of said locomotives and tenders at that price.

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And having purchased the said locomotives and tenders with all the rights incident thereto, your petitioners afterwards exported four of said locomotives and tenders from the United States, the same never having been used within the said United States, at the times and to the places hereinafter named, that is to say: One locomotive and tender sold to the St. Stephens' Branch Railway Co., and shipped to and received at St. Stephens in the British province of New Brunswick, the twenty-fourth day of September, 1866; one locomotive and tender sold to the New Brunswick and Canada Railway Company, shipped to and received at St. Andrews, in the British province of New Brunswick, the twenty-second day of December, 1866; one locomotive engine and tender sold to the Port Hope, Lindsay and Beaverton Railway Company, and shipped to and received at Port Hope, in Canada, September eleventh, 1867; and one locomotive and tender sold to the International Railway Company of New Brunswick, March eleventh, 1868, for transportation to said New Brunswick, and shipped to and received at Brundages Point, on the St. John River, in said New Brunswick, on 28th day of July, 1868.

And your petitioners before the first day of October, in the year eighteen hundred and sixty-eight, furnished the Commissioner of the Internal Revenue of said United States at the Treasury Department in Washington, the evidence of the sale and exportation of said locomotives and tenders, and then and there claimed the allowance and the drawback of the internal tax or duty that had been paid upon the same, to wit, the sum of six thousand four hundred and eighty dollars, to which allowance they say they were by law entitled under the provisions of the one hundred and seventy-first section of the act of the Congress of said United States approved June 30th, 1864, entitled, "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," but that the allowance of said sum was refused by said Commissioner.

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Your petitioners further say that all said corporators have at all times borne true allegiance to the Government of said United States, and have not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said Government.

Your petitioners further say that there has been no assignment of their claim hereinbefore set forth, or of any part thereof; that the facts herein set forth, all and singular, are true; and that, under the provisions of the said one hundred and seventy-first section of the said act of Congress above referred to, an allowance or drawback of the internal revenue duty or tax that had been paid upon said four locomotives and tenders, amounting to six thousand four hundred and eighty dollars is due them.

JACOB McLELLAN, *Treasurer.*

UNITED STATES OF AMERICA.
Maine District, ss:

DISTRICT CLERK'S OFFICE,
Portland, May 26, 1869.

Then personally appeared Jacob McLellan, who subscribed the fore-

going petition, and made oath that the matters stated therein were true, to the best of his knowledge, information, and belief.

Before,
[SEAL.]

WM. P. PREBLE,
Clerk, U. S. D. C. Maine.

THOMAS J. D. FULLER, *Washington, D. C.*,
Solicitor for Petitioner.

Petitioner's address, *Portland, Maine.*

5 In the United States Court of Claims. December term, A. D. 1869.

THE PORTLAND COMPANY
vs.
THE UNITED STATES. } No. 6082.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of sixty-four hundred and eighty dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

THOMAS H. TALBOT,
Assistant Attorney General.

Filed Jan'y 7, 1870.

6 In the Court of Claims.

THE PORTLAND COMPANY
vs.
THE UNITED STATES. } 6082.

And now, to wit, 25th of April, A. D. 1870, the court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree, that the said claimants take nothing by their suit, & that their petition be dismissed.

By the court.

A true copy of record.

7 In the Court of Claims. Dec. term, 1869.

THE PORTLAND COMPANY
vs.
THE UNITED STATES. } 6082.

On this 26th May, 1870, the claimants in the above cause file with the clerk of said court this their notice of and request for the allowance of an appeal from the judgment of this court dismissing their petition, rendered April 25, 1870.

By their att'y.

GEO. F. TALBOT.

Filed in clerk's office May 26, 1870.

AT CHAMBERS, 26 *May*, 1870.

Ordered, that the appeal, as prayed in the case of The Portland Company vs. The United States, No. 6082, be allowed.

JOSEPH CASEY,
Ch. Justice.

8 In the Court of Claims.

THE PORTLAND COMPANY }
vs. } 6082.
THE UNITED STATES. }

Findings of fact and conclusion of law.

This case having been heard before the chief justice and judges of the Court of Claims, at the city of Washington, on the 25th day of April, 1870, the court, after due deliberation upon the proofs and evidence given at the trial, does hereby, at the time of rendering judgment, find the following facts:

This case came on to be heard before the Court of Claims on the merits.

The claimants, in their petition, set up a claim for allowance and drawback of the internal tax or duty that had been paid upon four locomotives and tenders, which had been sold by the United States at public auction, of which claimants became the purchasers, and which they had exported and sold outside the United States, founding their right to recover under the provisions of the one hundred and seventy-first section of the act of Congress to provide internal revenue to support the Government, &c.

The Court of Claims held that it had not jurisdiction to hear and try a question or action arising under the revenue laws, and therefore dismissed the petition.

By the court.

9 In the Court of Claims.

THE PORTLAND COMPANY }
vs. } No. 6082.
THE UNITED STATES. }

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant, for the allowance of an appeal, as filed in the clerk's office May 26, 1870, and of the order of the court allowing the same; of the finding of facts & conclusion of law thereon, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this twenty-fifth day of March A. D. 1871.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 534. The Portland Company, appellant, vs. The United States. Court of Claims. Filed 10th April, 1871.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

THE PORTLAND COMPANY, APPELLANTS,
vs.
THE UNITED STATES.
} No. 88.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

THE PORTLAND COMPANY, APPELLANTS,
vs.
THE UNITED STATES. } No. 88.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

STATEMENT.

This is a petition by the Portland Company, a corporation established at Portland, Maine, to the Court of Claims, to recover the drawback allowed by section 171 of the act of June 30, 1864, (13 Stat. at Large, 302–3,) on four locomotive-engines exported by them. The said engines were manufactured by the claimants under a contract with the United States, and the internal-revenue tax thereon was paid. Afterwards the engines were sold by the Government at public auction, and the claimants bought them.

The Court of Claims dismissed the petition, and the claimants appealed.

ARGUMENT.

The section of the act of 1864, (*supra*,) upon which the claimants rely to sustain their demand in this case, provides that a drawback shall be allowed upon certain

articles on which an internal-revenue duty or tax has been paid, "when exported, the evidence that any such duty or tax has been paid to be furnished to the satisfaction of the Commissioner of Internal-Revenue, by such person or persons as shall claim the allowance or drawback, and the amount to be ascertained under such regulations as shall, from time to time, be prescribed by the Commissioner of Internal-Revenue, under the direction of the Secretary of the Treasury."

Thus, the very statute which makes an exporter an allowance for drawback equal to the amount of internal-revenue tax or duty that may have been paid upon the exported article, provides particularly the manner in which the drawback shall be ascertained and allowed.

Such being the case, the decision of this court in *Nichols vs. The United States*, (7 Wall., 122,) must rule this case. Mr. Justice Davis, in delivering the opinion of the court, then said: "Congress has, from time to time, passed laws on the subject of the revenue, which not only provide for the manner of its collection, but also point out a way in which errors can be corrected. These laws constitute a *system*, which Congress has provided for the benefit of those persons who complain of illegal assessments of taxes and illegal exactions of duties." "And an equal provision has been made to correct errors in the administration of the internal-revenue laws."—(*Ibid.*, p. 130.)

It may be contended that in the case of a drawback allowed on the exportation of manufactured articles, there is no provision in the revenue laws for bringing a suit to recover the same, if the Commissioner of Internal Revenue should refuse to pay it in a proper case. But the answer to this is, that Congress is not called upon to make provision for a suit at law to recover back a tax illegally assessed or retained, but may leave the decision of the question of whether taxes are legally due or not to an executive officer.

Cary vs. *Curtis*, (3 How., 236.)
Curtis vs. *Fiedler*, (2 Black, 461.)
The Collector vs. *Hubbard*, (12 Wall., 1, 12, 13.)

A drawback on an exported article allowed by Congress is in the nature of a bonus or bounty given to the exporter to encourage exportation; and like any other gift, Congress may make it subject to any condition it pleases. In this case, Congress has declared that such an allowance shall be made by the Commissioner of Internal-Revenue, upon certain proofs produced to him, and upon a decision by him; and the drawback is, in effect, allowed, when the Commissioner of Internal-Revenue has adjudicated that a drawback ought to be allowed in any given case. As Congress has made no provision for any appeal from his decision, it must be considered as final and binding upon all concerned.

See, also, *Meade* vs. *The United States*, (9 Wall., 691.)
De Bode vs. *The Queen*, (3 H. L. Cas., 449.)

C. H. HILL,
Assistant Attorney General.

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Rail Roads

v

Richmond

— " —

& Motion & not among

the Records

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No Paper-Books.

— — — —

16-8.

Railroad

vs

Johnson.

A motion

To paper Books.